disturbed even by the trial court, unless plainly against the weight of the evidence.

[Ed. Note.—For other cases, see New Trial, Cent. Dig. §§ 146-148; Dec. Dig. § 72.* 1 Va.-W. Va. Enc. Dig. 581, et seq.]

3. New Trial (§ 72*)—Verdict—Weight of Evidence.—Where, in an action for injuries to a street car passenger, the evidence was amply sufficient to sustain a finding either way that plaintiff alighted before the car stopped, or that the car started prematurely before plaintiff had time to alight, a verdict for plaintiff, accepting the latter alternative, should not have been set aside as against the weight of the evidence, under the rule that to warrant a new trial, where the evidence is conflicting, the evidence must be insufficient to warrant the finding.

[Ed. Note.—For other cases, see New Trial, Cent. Dig. §§ 146-148; Dec. Dig. § 72.* 12 Va.-W. Va. Enc. Dig. 851.]

Judgment reversed. All the judges concur.

RIVERSIDE RESIDENCE CO., Inc., *v.* HUSTED.

June 10, 1909.

[64 S. E. 958.]

1. Cancellation of Instruments (§ 32*)—Contract of Sale—Nature of Remedy.—A court of law cannot rescind a contract for the sale of real estate.

[Ed. Note.—For other cases, see Cancellation of Instruments, Dec. Dig. § 32.* 13 Va.-W. Va. Enc. Dig. 546.]

2. Vendor and Purchaser (§ 342*)—Contract—Breach by Vendor—Vendee's Remedies.—On breach of a contract by a vendor, the vendee may abandon possession and set up the breach as a defense when sued for the purchase price, or, if he has paid a part or the whole of the purchase money, he may sue at law to recover it, having abandoned the premises or restored them to the vendor, or he may sue in equity for a rescission.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. §§ 1018, 1019; Dec. Dig. § 342.* 13 Va.-W. Va. Enc. Dig. 543, et seq.]

3. Vendor and Purchaser (§ 334*)—Breach by Vendor—Purchase Money—Recovery.—Plaintiff purchased certain lots for a residence on installments. Plaintiff had paid over a third of the price when she discovered that defendant had permitted a race track corporation to remove the soil from the greater part of the lots, and excavate them. Held that, possession never having been delivered, and defendant having placed itself in such a position that it could not deliver the

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*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

land sold in substantially the condition it was in when the contract was made without plaintiff's fault, she was entitled to recover the money paid.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. §§ 959-980; Dec. Dig. § 334.* 13 Va.-W. Va. Enc. Dig. 543, et seq.]

Judgment affirmed. All the judges concur.

SHREVE *v.* NORFOLK & W. RY. CO. et al.

June 10, 1909.

[64 S. E. 972.]

Deeds (§ 145*)—Construction—Condition or Covenant.—The provision in a deed of land to a railroad company that it is made "in consideration of the said railroad company agreeing to erect and maintain a depot on the land conveyed" is not a condition subsequent, entitling the grantor to recover the land in ejectment of a failure of the company to erect such depot, but is only a covenant or agreement.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 471; Dec. Dig. § 145.* 4 Va.-W. Va. Enc. Dig. 439.]

Judgment affirmed. All the judges concur.

WASHINGTON, A. & MT. V. RY. CO. *v.* TAYLOR.

June 10, 1909.

[64 S. E. 975.]

1. Master and Servant (§§ 101, 124, 125*)—Obligation of Master.—A master must use ordinary care to provide reasonably safe and suitable appliances for his servants, and must inspect the same from time to time and use ordinary care to discover and repair defects; but, unless he knows or by the use of ordinary care ought to have known that an appliance has become defective, he is not liable for an injury resulting therefrom.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 135, 171, 172, 173, 174, 180-184, 192, 235-242, 243-251; Dec. Dig. §§ 101, 124, 125.* 9 Va.-W. Va. Enc. Dig. 674, 680, 683.]

2. Master and Servant (§ 265*)—Injury to Servant—Burden of Proof.—Where the breach of duty assigned on the part of a master was his negligence in permitting a trolley pole on a car to get out of repair, there could be no recovery for injuries to a servant struck by the pole falling from the car, unless it was proved that the trolley pole was out of repair, that the defect was the proximate cause of the accident, and that the master knew or ought to have known of the defect by the use of ordinary care.

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*For other cases see same topic and section NUMBER in Dec. & Am. Digs 1907 to date, & Reporter Indexes.